IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATIONS NO. 13 /2007 & 14/2007

CIVIL REVISION APPLICATION NO.13/2007

Daulatrao Yeshwantrao Chowgule,
s/o. Yeshwantrao Chowgule, aged 54 years,
businessman, r/o. Mangor Hill,
Vasco da Gama. ..... Petitioner.

V/s.

1) Collector and District Magistrate,
South Goa, Margao,

2) The Flat Officer Commanding,
Headquarters, Goa Naval Area,
Vasco-Da-Gama, Goa. ..... Respondents.

CIVIL REVISION APPLICATION NO.14/2007

Smt. Padma Srinivas Mahale,
1st Floor, Gabmar Apartments,
Vasco-Da-Gama, Goa
(since deceased through her
legal representatives) -

a) Megha Dhirendra Thakker,
d/o. Late Padma S. Mahale,

b) Dhirendra Sunderlal Thakker,
H/o. Megha Dhirendra Thakker,
both majors, r/o. Thakker House,
Swatantra Path, Vasco-Da-Gama, Goa.

c) Varsha Pramodchandra Despande,
d/o. Late Padma S. Mahale,

d) Pramodchandra Balkrishna Despande,
H/o. Varsha Pramodchandra Despande,
both majors, r/o. Varsha,

Dabolim, Zuarinagar, Goa. ..... Petitioners.

V/s.

1) Collector and District Magistrate,
South Goa, Margao,

2) The Flat Officer Commanding,
Headquarters, Goa Naval Area,
Vasco-Da-Gama, Goa.

3) Union of India,
Ministry of Defence,
through Defence Estate Manager,
New Delhi. ..... Respondents.

Mr. Dajvip V. Patkar, Advocate for the petitioners.

CORAM : S.A. BOBDE, J.

DATE : 3RD MAY, 2007

ORAL ORDER :

These revision applications are against the Order of the Taxing Officer dated 23.3.2007 whereby the Taxing Officer has held that the appellants must value the appeals and pay ad valorem court fee on the appeals.

2. The issue that arises in these revision petitions is whether the Court fee is payable in respect of a first appeal arising from an order made by the Court while deciding a reference under Section 18 of the Indian Works of

Defence Act, 1903. The Taxing Officer has held that the Court fee is payable on the appeal like on other appeals preferred under Section 96 of the Code of Civil Procedure and, has, therefore, charged ad valorem Court fee. Thus, the Taxing Officer has charged Court fee on the memo of appeal only on the ground that other appeals under Section 96 of the Code of Civil Procedure are also chargeable to similar ad valorem Court fees.

3. In Goa ad valorem Court fee is chargeable on a plaint, written statement, pleading, a set of or memorandum of appeal under Item I of Schedule I-A of the Court Fees (Goa Amendment) Act, 1997. The said item reads as follows :

> " Plaint, written statement, pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any civil or revenue Court except those mentioned in Section 3."

However, Section 7 which is the charging section of the Court Fees Act does not contain any specific provision for charging court fee on memo of appeals and refers only to suits for the purpose of chargeability to Court fee. However, a Division Bench of Punjab High Court has considered Section 7 in ***Sham Lal L. Dogarmal v. Om Prakash L. Sant Ram Aggarwal and ors.,*** reported in AIR 1955 Punjab 223. The Court in paragraphs 12 and 13 has

observed as follows :

> "(12) Section 7(iv) of the Act which begins with the words 'in suits' provides that court fee is to be computed according to the amount at which the relief sought is valued in the 'plaint or memorandum of appeal'. Plainly, S.7(iv) of the Act implies the applicability of the provisions to appeals.
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> (13) Again, in numerous cases reported in books it has been said that when the subject-matter in dispute in an appeal is not different from the subject-matter in dispute in the suit in the trial court the appeal will be governed for the purposes of court fee by the same provisions as the suit. In case there is no difference in the nature of the relief in dispute the subject matter need not be considered to be different and the appeal will be governed for purposes of court fee by the same provision as it is applicable to the suit though the amount of court fee leviable in appeal may be different. In my judgment, there is no substance in the argument that the proviso to S. 7(iv) (c) of the Act added by Punjab Act XXXI of 1953 has no application to appeals."

4. I am in respectful agreement with the view of the Punjab High Court. Thus, applying the said principle to the present case, it is clear that the reference under Section 18 under the Indian Works of Defence Act, 1903 is

not chargeable to any Court fee. Therefore, in my view, an appeal against an order made in such a reference also would not be chargeable to any Court fee.

5. It must be noted that there is a specific provision made in the Schedule to the Goa amendment under item 3 for charging a reference under the Land Acquisition Act to Court fee. That item reads as follows :

> "Application to the Collector for reference to the Court under section 18 of the Land Acquisition Act, 1894 (1 of 1894)"

The item does not make any reference to a reference under the Works of Defence Act. The Court Fee Act is essentially a taxing statute and must be construed strictly. In this view of the matter, the order of the Taxing Officer is, hereby, set aside. No Court fee is payable on the Memo of Appeal in question.

S.A. BOBDE, J.

ssm.